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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित
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भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 16 नवम्बर, 2015

आ.अ. 1(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (क) के अनुसरण में, निर्वाचन आयोग एतद्वारा 2014 की निर्वाचन याचिका सं. 100001 में कर्नाटक उच्च न्यायालय, के आदेश दिनांक 09-04-2015 को प्रकाशित करता है
aa
(निर्णय अंग्रेजी अधिसूचना में छपा है)

[सं.82/कर्नाटक-लोक सभा/100001/2014/ 149]

आदेश से,
दारसुओ थांग, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 16th November, 2015

O.N. 01(E).—In pursuance of Section 106 (a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the High Court of Karnataka dated 09.04.2015 in Election Petition No. 100001 of 2014.

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH
DATED THIS THE 09TH DAY OF APRIL, 2015
BEFORE
THE HON'BLE MRS. JUSTICE RATHNAKALA
ELECTION PETITION NO. 100001/2014

BETWEEN:

KHANAGOUDAR SHIVAGOUDAPPA BALAPPA

ADVOCATE,

EDITOR : GINIRAMAKANNADA WEEKLY AND

ORGANIZER INDIAN INTELLECTUAL

VOTERS FORUM,

GHATAPRABHA – 591 306,

TQ: GOKAK

DIST: BELGAUM

KARNATAKA STATE.

...PETITIONER

(BY SRI S.B.KHANAGOUDAR, PARTY-IN-PERSON)

AND:

1.THE CHIEF ELECTION

COMMISSIONER OF INDIA

ASHOKA ROAD,

NIRVACHANA SADAN

NEW DELHI.

2.THE RETURNING OFFICER

02 - BELGAUM PARLIAMENTARY

CONSTITUENCY OF KARNATAKA

STATE AND DISTRICT ELECTION OFFICER

AND DEPUTY COMMISSIONER,

BELGAUM.

3. SHRI ANGADI SURESH CHANNABASAPPA

(BJP) RETURNED CANDIDATE AS MP FROM

02 - BELGAUM PARLIAMENTARY CONSTITUENCY

SAMPIGE ROAD,

VISHWESHWATRAYYANAGAR,

BELGAUM,

KARNATAKA STATE.

4. SMT. LAXMI R HEBBALAKAR

H.NO. 27/B, BASAV KUNJ,

KUVEMPU NAGAR,

HINDALAGA,

BELGAUM

CONGRESS – I CANDIDATE.

5. SHRI BAGAWAN NASEER PAPULSAB

H NO. 325, GANDIWAD,

TQ: KHANAPUR

DIST: BELGAUM

J D S CANDIDATE.

6. SHRI RAMESH G KADALASKAR

PLOT NO. 25, NEAR T V CENTER,

BELGAUM (BSP)

7. SHRI ANGADI MUTTAPPA CHANNASANGAPPA

SANGAM SEEDS AND AGRO CHEMICALS

SHOP NO.4, CANTONMENT VEG,

MARKET, BELGAUM (AAP)

8. SHRI DAYANAND GURUPUTRAYYA

CHIKKAMATH

H NO. 621, OPP. SYNDICATE BANK

BUS STAND ROAD, BAILHONGAL,

BELGAUM DISTRICT (S.P)

9. SHRI ANTAKKANAVAR PARAPPA SHANKERAPPA

AT POST: HOOLI, TQ: SAUNDATTI

DIST: BELGAUM

KARNATAKA STATE (INDP.)

10. DR. GAONKAR RAJMAHENDRA SAKHARAM

H.NO. 430, 2ND MAIN, 6TH CROSS,

SADASHIV NAGAR,

BELGAUM – (INDP)

11. SHRI MAJUKAR HANAMANT KRISHNA

H. NO. 1115, MAJUKAR GALLI,

DESUR, TQ

DIST: BELGAUM—(INDP)

12. SHRI MOHAN YALLAPPA MORE

H. NO. 95, CHAVAT GALLI,

KAVALEWADI TQ,

BELGAUM DISTRICT

13. SHRI S P RATOD

H NO. 1700, BANJARA COLONY,

HINDALAGA ROAD,

BELGAUM - INDP

14. SHRI RAMAPPA MAREPPA CHALAVADI

JAIBHIM KUTEER,

RAMAPUR SITE

NEAR HOOLI AJJANA GUDI,

GORLHOSUR,

TQ: SOUNDATTI

DIST: BELGAUM

KARNATAKA STATE – (INDP)

15. SHRI SANTOSH MANOHAR BAVADEKAR

H NO.92/3, ADARSHA AND OMKAR NAGAR,

ANGOL,

BELGAUM – (INDP)

16. SHRI SANTOSH M SHET @ RAYAKAR

SHRI PRASAD NILAYA,

NO. 286/B, 3RD CROSS,

SHASTRI NAGAR,

BELGAUM – (INDP)

...RESPONDENTS

(R1 & R2 DELETED V/O DATED:17.07.2014;

SRI M.B.NARAGUND, SENIOR COUNSEL FOR

SRI V.P.KULKARNI, ADV. FOR R3;

SRI VEERESH R. BUDIHAL, ADV. FOR R4;

NOTICE TO R5, R7, R8, R10, R11, R12, R13, R14, R15 &

R16 ARE PLACED EX-PARTE

SRI HARISH S. MAIGUR, ADV. FOR R6

SRI ANAND D. BAGEWADI, ADV. FOR R9)

THIS ELECTION PETITION IS FILED ON 17.06.2014 AT 4 PM U/Ss.58, 64, 80, 80A, 81, 84 OF THE REPRESENTATION OF PEOPLE ACT-1951 & CONDUCT OF ELECTION RULES-1961, RULE-5 R/W. ARTICLE 329(B) OF THE CONSTITUTION OF INDIA, PRAYING TO:

THAT AS PER SEC.84 OF THE R.P.ACT, 1951, THE PETITIONER CLAIMS THAT THE RESULT DECLARED ON 16.05.2014 IS VOID AND FURTHER CLAIMS TO REPOLL AS PER SEC.58 OF R.P.ACT SINCE RES.NO.2 DISCHARGED HIS DUTIES AND POWERS UNFAIRLY AND PARTIALLY. THE PETITIONER PRAYS TO GIVE 22 DAYS TIME TO CANVASS HIS CANDIDATURE. THE PETITIONER DOES NOT SAY THAT HE HIMSELF IS THE RETURNED CANDIDATE. FIRST OF ALL HE HAS BEEN NOT PERMITTED TO CANVASS. THEREFORE IT IS FOR THE ADJUDICATION TO CONSIDER THE RESULT OF THE DECLARATION OF THE RESULT ON THE BASIS OF FACTS AND CIRCUMSTANCES OF THE CASE, ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.03.2015 AND COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDERS ON I.A.NOS.4/2014 AND 5/2014

While deletion of paragraph Nos.4 to 8 and 10 to 26 is sought in I.A.No.4/2014, rejection / dismissal of the very election petition is sought in I.A.No.5/2014 by the third respondent / Returned Candidate of Parliament from 02 – Belgaum / the Lok Sabha Election held in the month of May, 2014.

2. In the former application, Order 6 Rule 16 of Civil Procedure Code r/w. Sections 81, 83 and 87 of Representation of People Act, 1951 (hereinafter referred to as ‘the Act’ for brevity) is invoked and the later Section 81 (3), 83 and 86 of the Act r/w. Order 7 Rule 11 of CPC is sought to be pressed into action.
3. Both applications are supported with the affidavits of Sri Angadi Suresh, the Returned Candidate and Member of Parliament from 02 - Belgaum Parliamentary Constituency.
4. The election petition is filed by Sri Khanagoudar Shivanagoudappa Balappa, who was one of the candidates in the above said election for the following relief:

1) That as per Sec.84 of the R.P.Act, 1951 the Petitioner claims that the result declared on 16.05.2014 is void and further claims to repoll as per Sec.58 of R.P.Act since

Res.No.2 discharged his duties and powers unfairly and partially. The petitioner prays to give 22 days time to canvass his candidature. The petitioner does not say that he himself is the returned candidate. First of all he has been not permitted to canvass. Therefore it is for the adjudication to consider the result of the declaration of the result on the basis of facts and circumstances of the case.

2) To petitioner prays the Hon'ble Court to consider as to how his fundamental rights are infringed by res.no.2 and 1 and to pass the judgment and order as the hon'ble court deems fit.

3) That on the basis of illegalities of Res.No.3 and 4 and on the basis of press statement of Res.No.3 and further that on the basis of mass procession brought by both the candidates on the day of filing of nomination papers and on the basis of method they followed to get votes without telling the meaning of the term party and by using the sacred words like Hara Hara and Shiva Shiva and Ram Ram Res.No.1 and 2 may be ordered to disqualify Res.No.3 and 4 and to pass an order to repoll.

4) Res.No.1 may please be ordered to take legal action on the petition filed by the petitioner on 28.04.2014 and 29.04.2014.

5) If repoll is not ordered then atleast to order to pay the deposited amount of Rs.25,000/- by saying symbols mentioned in the nomination papers. that the petitioner has failed to produce A and B form to get the symbols mentioned in the nomination papers.

6) That as per section 118 and 119 of R.P.Act Respondents may be order to deposit security amount.

7) Considering how much votes are obtained by the petitioner and how much amount is expended and comparing the same with the expenditure of Res.No.3 and 4. The Hon'ble Court may please consider and pass the judgment and order. The Chief Election Commissioner of India may please be issued the instructions to see as to whether the independent candidates canvass without any official obstructions. The independent candidates and the party candidates are having equal rights and the concerned election officers must not follow the ways of discrimination. Vehicle

permission and loud speaker permission simultaneously may please be given in future days so as to enable the independent candidates to canvass. Judgement and order in this regard may please be passed.

8) Contesting candidates must tell the definition of the term party to the voters in the interest of unity and integrity of the nation. Judgment and order in this regard may please be passed and necessary instructions to the Chief Election Commissioner of India may please be issued since there are more than 642 party to political parties. Until and unless the voters don't understand the meaning of the term party unity and integrity of the nation cannot be strengthened. Therefore in the interest of preamble of the Constitution of India the contesting candidates must ask the vote and not on the basis of sacred words. Judgment and order in the regard may please be passed.

5. Sri V.P. Kulkarni, learned Counsel for the Returned Candidate/respondent No.3 submits that the nomination to 02 – Belgaum Lok Sabha Constituency commenced on 20.03.2014; the last date to file the nomination was 26.03.2014; 27.03.2014 was the date of scrutiny; 28.03.2014 was the date of withdrawal; symbols were allotted on 29.03.2014; the polling was held on 17.04.2014 and the results were declared on 16.05.2014. The petitioner who was one of the candidates is urging various rights in his election petition but the electoral right conceived by him as fundamental right is not a right guaranteed under the Constitution of India. The electoral right is as contemplated under Section 79 (d) of the Act. Further, under Section 80 of the Act, if the election petition is not in accordance with the provisions of Chapter II, it is liable to be rejected at the threshold itself as not maintainable. Any question that may be urged in an election petition shall be within the four corners of the grounds specified in Sub-section (1) of Section 100 and Section 101 of the Act and the limitation prescribed for presentation of the election petition is 45 days, from the date of declaration of the election result of the Returned Candidate as per Section 81 (1) of the Act. The Act does not contemplate benefit of condonation of delay in respect of petition filed beyond the period of 45 days. Since, the election result was declared on 16.05.2014, the period to question the said election expired on 30.06.2014. The petition is said to have been filed in the office on 17.06.2014 but the index annexed to the petition is dated 08.07.2014 and in the synopsis the petitioner mentions the date 04.07.2014, as the day on which form No.21 (c) was issued by the Returning Officer. Though application for certified copies of the documents is said to have been filed by the petitioner on 02.06.2014, the synopsis to the petition does not bear his signature and election petition is undated.

6. Learned Counsel Sri V.P.Kulkarni has produced the copy of the petition served on 3rd respondent, for it's comparison with the original copy presented to the Court. It is obvious that the copy served on respondent No.3 is not the photocopy of the election petition filed in the Court, more particularly, first page of the petition. Moreover, verifying affidavit which is dated 21.06.2014 is not a running page of the original petition, but a separate document by itself. Stressing on the above aspect of the matter Sri V.P. Kulkarni, submits that the petition was filed much after 30.06.2014 beyond the period of 45 days stipulated by Section 81(1) of the Act, which reads thus:

"81. Presentation of petitions:-(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation:- In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

7. Further, the learned Counsel while taking the Court through Subsection (3) of Section 81 of the Act, which reads thus:

"(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

submits that, the copy of the election petition served on each of the respondents shall be attested by the petitioner under his own signature to be the true copy of the petition. But that is not done on the copies served on respondent No.3 that is another ground which invalidates the petition. The parties to an election petition can only be as contemplated under Section 82 of the Act and the statute does not contemplate the Returning Officer and the Election Commissioner as the respondents; but the petitioner herein arrayed the Chief Election Commissioner of India and Returning Officer as respondent Nos.1 and 2. Though subsequently, he got respondents No.1 and 2 deleted, at the inception i.e., on the date of presentation of the petition it was bad for misjoinder of unnecessary parties.

8. Learned Counsel further submits that, the contents of an election petition is envisaged by Section 83 of the Act, thus:

- (a) *a concise statement of material facts on which the petitioner relies,*
- (b) *full particulars of the corrupt practice which he is alleging including as full a statement of the names of the parties alleged to have committed the said corrupt practice and the date and place of commission of each such practice and that apart,*
- (c) *the statement shall be verified as per the provisions of Civil Procedure Code, 1905 for verification of the pleadings.*

9. The contents of the election petition shall be strictly in accordance with Section 83(1) of the Act and verification as per Section 83(1)(c) of the Act. But the election petition herein does not comply above requirements. Though corruption is alleged at para No.11 of the petition, it is not supported with material facts and particulars of corruption alleged. Affidavit which is referred to in Section 83(1)(c) of the Act is further controlled by Rule 94A of the Conduct of Elections Rules, 1961 according to which the said affidavit shall be in form No.25. But the affidavit appended to the petition is not in accordance with form No.25. The schedule to the petition is not verified in accordance with Section 83 (2) of the Act. The relief that can be claimed in an election petition is within the scope of Section 84 of the Act only. But in the present petition multiple reliefs sought as noticed above, are beyond the scope of an election petition. It is mandate of law that the election petition not complying with the provisions of Sections 81, 82 and 117 of the Act is liable to be dismissed under Chapter III, Section 86 (1) of the Act.

"86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

Explanation.—An order of the High Court dismissing an election petition under this subsection shall be deemed to be an order made under clause (a) of Section 98.

10. As per Rule 22 of Election Petition Procedure Rules of the Karnataka High Court Act, 1961 and Rules, 1959, the security for costs shall be paid in cash and the petition shall be accompanied by a memorandum of certificate from the Accounts Branch of the High Court about deposit of security money. But no such certification is found in the case records. In view of Proviso to Sub-section 2 of Section 80-A of the Act, election petition shall be directly presented to the Court, but this petition is presented to the Registry. Learned Counsel concludes that if the petition which is fraught with so much of irregularities and

deviations, if allowed to proceed, that would be nothing but a luxury litigation, waste of public time and energy serving no purpose. Hence, the petition is liable to be rejected in the threshold itself as not maintainable.

11. The petitioner/party-in-person has filed his objections statement to the above application. The tone of his objections is, the defects noticed by respondent No.3 could have been raised by him at the earliest point of time, when he put in his appearance before filing the written statement on 26.08.2014. By way of application he sought four weeks' time to file his written statement. The petitioner was given time to comply the office objection which he duly complied. The dates are mentioned in the index and the synopsis as and when he complied the office objections. He had filed the petition on 17.06.2014, well within 45 days, the time stipulated under the Act. He had applied for certified copy of form No.21 (c) Rule 64 well in time but the Returning Officer issued the certified copy only on 04.07.2014, said date is mentioned in the synopsis. Though there is variance in respect of date of presentation of the petition, the doctrine of curability may be applied. The ministerial errors cannot take away the rights in prosecuting this case, since they can be cured and both applications are liable to be rejected.

12. In the light of the above, the sole point that arise for my consideration is:

"Whether the election petition suffers from inherent defects?"

13. The lis between the parties at this stage is confined to the question as to whether the election petition is in strict adherence to the statutory requirement of Section 83 of the Act, which is filed within the period stipulated under Section 81(1) of the Act.

14. The principle under which an election petition is to be examined was enunciated by the Apex Court in the case of ***Samant N.Balakrishna Vs. George Fernandez and Others*** reported in ***AIR 1969 SC 1201 (1)***, at para No.33 has held as under:

"33. To begin with it must be realised that as is stated in Jagan Nath Vs. Jaswant Singh, 1954 SCR 892 (895) = (AIR 1954 SC 210 at P.212), the statutory requirements of the law of Election in India must be strictly observed. It is pointed out in that case that an election contest is not an action at law or a suit in equity but a purely statutory proceeding unknown to common law and that the Court possesses no common law power. Although the power of amendment given in the Code of Civil Procedure can be invoked because Section 87 makes the procedure applicable, as nearly as may be to the trial of election petitions, the Representation of the People Act, itself enacts some

rules which override the Civil Procedure Code. General power of amendment or the power derived from the Code of Civil Procedure must be taken to be overborne in so far as the election law provides. In a large number of cases it has been laid down by the High Courts in India that the material facts, must make out a charge and it is only then that an amendment to amplify the charge can be allowed or new instances of commission of corrupt practice charged can be given. If no charge is made out in the petition at all the addition of particulars cannot be allowed to include indirectly a new charge. This was laid down in *Din Dayal v. Beni Prasad*, (1958) 15 Ele LR 131 (All), *Balwan Singh v. Election Tribunal, Kanpur*, (1958) 15 Ele LR 199 (All) by the Allahabad High Court, in *T. L. Sasivarna Thevar v. V. Arunagiri*, (1958) 17 Ele LR 313 (Mad) by the Madras High Court and in *Hari Vishnu Kamath v. Election Tribunal, Jaipur*, (1958) 14 Ele L R 147 (MP) by the Madhya Pradesh High Court. All these cases rely upon Harish Chandra Bajpai's case, 1957 SCR 370 = (AIR 1957 SC 444) to which we have referred. Harish Chandra Bajpai's case, 1957 SCR 370 = (AIR 1957 SC 444) was based on an English case *Beat v. Smith*, (1869) LR 4 CP 115. In that case it was held that under the Parliamentary Election Act of 1868 it was enough to allege generally in the petition that "the respondent by himself and other persons on his behalf was guilty of bribery, threatening and undue influence before, during and after the election." A summons was taken out calling upon the petitioner to deliver better particulars of "other persons". Willes, J., after consulting Martin, B and Blackburn, J. ordered better particulars. It was contended that the petition should be taken of the files since the particulars were lacking. Section 20 of that Act only provided that an election petition should be in such form and should state such matters as may be prescribed. Rule 2 prescribed that the petition should state (i) the right of the petitioner to petition and (ii) should state the holding and result of the election and then should briefly state such facts and grounds relied on to sustain the prayer. Rule 5 prescribed the form which required facts to be stated. Bovill, C.J., said that the form of the petition was proper and it was quite useless to state anything further. But in *Bruce v. Odhams Press Ltd.* 1936 – 1 KB 697 the Court of Appeal distinguished 'material facts' from 'particulars' as they occurred in Order XIX of the Rules of the Supreme Court of England. The words there were material facts and particulars and the distinction made by Scott, L.J. bears out the distinction we have made between 'material facts' and 'Particulars' as used in s. 83 of our statute. The same view was

also expressed in Phillips v. Phillips (1878) 4 QB 127. The observations of Brett, L.J. in that case also bear out the distinction which we have made."

15. Further, the Apex Court in the case of *Jitu Patnaik Vs. Sanatan Mohakud and Others* [AIR 2012 SC 913], at para No.19 it was observed as under:

"19. We are unable to accept the submission of Mr. Mukul Rohatgi. In long line of cases beginning from 1952 this Court has stated time and again that right to contest election or to question the election by means of the election petition is neither common law nor fundamental right. Instead, it is a statutory right regulated by the statutory provisions contained in the 1951 Act. The 1951 Act is complete and self-contained code within which the rights claimed in relation to an election or election dispute must be found. It is not necessary to refer to all such decisions in this regard but reference to few of them, namely, N.P. Ponnuswami V. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. And Others (AIR 1952 SC 64), Jagan Nath v. Jaswant Singh and others (AIR 1954 SC 210), Jyoti Basu & others v. Debi Ghosal and others [(1982) 1 SCC 691], Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi (AIR 1987 SC 1577) and Chandra Kishore Jha v. Mahavir Prasad and Others (AIR 1999 SC 3558) shall suffice".

That makes it clear that election petition cannot be prosecuted to achieve any of the fundamental rights guaranteed under the Constitution or common law right: It is only that right which is made available under the Act, that can be agitated, that too strictly in adherence to the rules and procedures contemplated under the relevant Rules. The Doctrine of Curability, condonation of delay leniency etc. are all foreign to the subject of the election dispute. In the light of the above, we will get back to the election petition.

16. Chapter II of the Act deals with the presentation of the petition to the High Court and Chapter III is about the trial of the election petition. Since, we are at the initial stage of examination of the legality of the election petition, our focus is on the procedure of presentation of the petition as contemplated under Section 81 of the Act, the parties to the petition as under Section 82, contents of the petition as under Section 83 and the relief that may be claimed by the petitioner as under Section 84 of the Act.

17. Admittedly, the election results were declared on 16.05.2014. As per Section 81(1) of the Act, the period of 45 days to file the election petition expires on 30.07.2014. From the perusal of the election petition on hand, it is clear that the index to the petition is dated

08.07.2014, the synopsis to the petition is though undated, refers to 04.07.2014, on which date form No. 27 was issued by the Returning Officer to the petitioner. On the first page of the petition, there is an endorsement to the effect that the petition is presented in the Registry on 17.06.2014. The facts of the case run from page Nos.6 to 14 and at the foot of the page No.14, we find the signature of the petitioner with the date 23.06.2014. Thereafter, the grounds urged commences from page Nos.15 to 22. Though the petitioner affixes his signature on each page of the petition, the prayer column is undated. There is no verification of the pleadings as contemplated under Section 83 (1) (c) of the Act. For the benefit of better appreciation of the fact, Section 83 of the Act is reproduced below:

“Section 83. Contents of petition:- (1) An election petition –

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.]”

18. Further, at page No.25 there is one affidavit styled as verifying affidavit dated 21.06.2014. But Section 83(1)(c) of the Act, does not contemplate such verifying affidavit, what is mandatorily required is, attestation of the petition in accordance with the provisions of Civil Procedure Code, 1908. Order VI Rule 15 of Civil Procedure Code, 1908 contemplates as Verification of the Pleadings thus:

“15. Verification of pleadings: - Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) *The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*

(3) *The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*

(4) *The person verifying the pleading shall also furnish an affidavit in support of his pleadings further, on amendment of the pleadings, a fresh affidavit has to be filed in consonance thereof.”*

What is contemplated in the proviso to Section 83 (1) (c) of the Act is, if the petitioner is alleging corrupt practice, he shall file an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Rule 94 A of the Conduct of Election Rules 1961, contemplates that such affidavit shall be in form No.25 and said format is made available in Conduct of Election Rules, 1961, as below:

“FORM 25

(See Rule 94A)

Affidavit

I,the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati.....(respondent No. In the said in petition) make solemn affirmation/oath and say—

(a) *That the statements made in paragraphs.....of the accompanying election petition about the commission of the corrupt practice of*.....and the particulars of such corrupt practice mentioned in paragraphs.....of the same petition and in paragraphs of the Schedule annexed thereto are true to my knowledge;*

(b) *that the statements made in paragraphs.....of the said petition about the commission of the corrupt practice of*.....and the particulars of such corrupt practice given in paragraphs.....of the said petition and in paragraphs.....of the Schedule annexed thereto are true to my information;*

(c)

(d)

etc.

*Signature of
deponent.*

*Solemnly affirmed/sworn by Shri/Shrimati.....at....this.....day
of.....20... .*

*Magistrate of the first
class/Notary/Commissioner of Oaths.]*

** Here specify the name of the corrupt practice."*

At the body of the affidavit in form No.25, filed by the petitioner reads thus:

Form 25

(See Rule 94 A)

*".....
.....*

a) That the statement made in paragraphs 1 to 16 of the accompanying election petition about the commission of the corrupt practice of respondent No.4 and 2, 3 particulars of corrupt practice mentioned in Paragraph 1 to 16 of the same petition and paragraphs 1 to 16 of the petition annexed are true to my knowledge. That the main allegation is on respondent No.2 and because of his unfair and partial way of discharging his duties and powers the corrupt practice has happened by respondent No.2 and 3.

b) That the statement made in paragraphs 1 to 16 of the said petition about the commission of the corrupt practice of respondent No.2, 3, 4 and the particulars of such corrupt practice given in paragraphs 1 to 16 of the said petition are to true to my information."

19. In the case of **Baldev Singh Vs. Shinder Pal Singh and Another** reported in 2007(1) SCC 341, at para Nos.23, it was held as under:

"23. The verification of an election petition, it was trite, must be done strictly in terms of Order 6 Rule 15 of the Code of Civil Procedure. It was, thus, incumbent on the part of the respondent herein to specifically state as to which statements made in the election

petition were true to his knowledge and which were true to his belief. A factual averment made in the election petition cannot be both true to the knowledge and belief of the deponent."

Without grasping the importance of filing an affidavit in Form No.25, the petitioner has filed a bald affidavit, which achieves nothing.

20. In **R.P.Moiddi's case Vs. J.T.1999 SC 457** reported in **AIR 2000 SC 388**, the Apex Court observed that the verification in the concerned election petition did not specify which of the allegations were true to the personal knowledge of the petitioner and which of the allegations were based on information of the petitioner believed by him to be true. Neither the verification in the petition or the affidavit gave any source of information of the petitioner as to which facts were not to his knowledge. In the case of **Regu Mahesh @ Regu Maheswar Rao Vs. Rajendra Pratap Bhanj Dev and Another** reported in **AIR 2004 SC 38**, it was observed with regard to uncured defects in the verification that '... there is gulf of difference between a curable defect and the defect continuing in the verification affidavit without any effort being made to cure the defect'.

21. Further, the petition deserves to be disqualified for another reason i.e., noncompliance of Section 83(2) of the Act – the annexures to the election petition are not signed and verified by the petitioner in the manner required to be verified in the petition.

22. Though eight relieves are mentioned in the prayer column, it is only the relief seeking declaration of the election dated 16.05.2014 as void, for repoll and the alternative relief for return of the deposited amount of Rs.25,000/- that can be brought within the frame work of the contents of a election petition. Section 81(1) of the Act, contemplates an election petition that can be presented on one or more grounds specified in Sections 100 and 101 of the Act. Section 101 of the Act is concerning a petitioner who apart from questioning the election of returning candidates claims declaration that he himself is duly elected. But that is not the case of the petitioner herein. He is not claiming such declaration. Hence, he has to restrict his grounds at Section 100 (1) (a) to (d) of the Act, which reads thus:

"100. Grounds for declaring election to be void.—[(1) Subject to the provisions of sub-section (2) if [the High Court] is of opinion— (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, as been materially affected —
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court] shall declare the election of the returned candidate to be void.]"

None of the above grounds is made use of in the present case. Though there is a thin filament of allegation of corruption in the petition, it is bereft of requisite facts, details and particulars with accuracy as required under Section 83(1) of the Act.

23. Regarding contents of an Election Petition, the Apex Court in the case of **Dhartipakar Madan Lal Agarwal Vs. Shri Rajiv Gandhi** reported in **AIR 1987 SC 1577**, held at para No.8 as ‘..... Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss.81 and 82 or S.117

24. It is the mandate of Section 80 of the Act – No election shall be called in question except by an election petition presented in accordance with the provisions of the Act. The election petition which does not comply with the provisions of Section 81 or 82 or 117 of the Act, shall be dismissed under Section 86 of the Act.

25. The Apex Court in the case of **Dhartipakar Madan Lal Agarwal Vs. Shri Rajiv Gandhi** reported in **AIR 1987 SC 1577**, at para Nos.8 and 14, reads thus:

"8.....Section 86 confers power of the High Court to dismiss an election petition which does not comply with the provisions of Section 81 and 82, or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of the suits under the Code of Civil Procedure 1908. Since provisions of Civil Procedure Code, apply to the trial of an election petition, Order VI Rule 16 and Order VI Rule 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Section 81,83,86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessarily, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition..... If after striking out the pleadings to the Court finds that no triable issues remain to be considered it has power to reject the election petition under Order VII Rule 11.

*14..... These decisions have settled the legal position that outside the statutory provisions there is no right to dispute an election. The Representation of the People Act is a complete and self contained Code within which any rights claimed in relation to an election or an election dispute must be found.
.....The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinize the pleadings relating to corrupt practice in a strict manner."*

In the case of **Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar** reported in 2009 (9) SCC PAGE 310, at para Nos.51, 53, 57, 58 and 59 reads thus:-

*"51. This Court in **Samant N. Balkrishna case (1969) 3 SCC 238**, has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In **Udhav Singh v. Madhav Rao Scindia (1977) 1 SCC 511**, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(l)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.*

53. In Udhav Singh case this Court observed as under: (SCC pp.522-23, para 41)

"41. Like the Code of Civil Procedure, this section also envisages a distinction between 'material facts' and 'material particulars'. Clause (a) of sub- section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rule 4 and 6 of the Code. The distinction between 'material facts' and 'material particulars' is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material facts leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order VI Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation." (emphasis in original).

57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and

purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies.

58. *There is no definition of "material facts" either in the Representation of Peoples Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action.....*

59. *In the context of a charge of corrupt practice, "material facts" would mean all basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner (the respondent herein) is bound to substantiate before he can succeed on that charge. It is also well-settled that if "material facts" are missing they cannot be supplied after expiry of period of limitation for filing the election petition and the pleading becomes deficient."*

In the case of **Ramsukh Vs. Dinesh Agarwal** reported in **2009 (10) SCC 541**, at para Nos.12, 17, 20 and 25 reads as under:

"12. It is evident that the controversy in this appeal lies in a narrow compass. It revolves around the ambit of Section 83 of the Act. The point for consideration is whether the election petition lacked "material facts" required to be stated in the election petition in terms of Section 83(1) of the Act and if so, could it be dismissed summarily without trial? As already noted, it is mandatory that all "material facts" are set out in an election petition and it is also trite that if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone. Therefore the question is as to whether the election petitioner had set out "material facts" in his petition?

17. Now, before examining the rival submissions in the light of the aforesaid legal position, it would be expedient to deal with another submission of learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the election petition at the threshold. The argument is twofold viz.:

(i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition, and

(ii) since Section 83 does not find a place in Section 86 of the Act, rejection of petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground.

In our opinion both the contentions are misconceived and untenable.

20. The issue was again dealt with by this Court in *Azhar Hussain v. Rajiv Gandhi* (1986 Supp SCC 315). Referring to earlier pronouncements of this Court in *Samant N. Balkrishna and Udhav Singh V. Madhav Rao Scindia* [(1977) 1 SCC 511], wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in *Azhar Hussain* case held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.

25. In our judgment, therefore, the Election Tribunal/High Court was justified in coming to the conclusion that statement of material facts in the election petition was completely lacking and the petition was liable to be rejected at the threshold on that ground. We have, therefore, no hesitation in upholding the view taken by the High Court. Consequently, this appeal, being devoid of any merit, fails and is dismissed accordingly. Since the first respondent remained unrepresented, there will be no order as to costs."

26. As per Section 81(1) of the Act, the election petition challenging the election of the Returned Candidate has to be filed within 45 days from the date of declaration of the results. In the case of ***Hukumdev Narayan Yadav Vs. Lalit Narain Mishra*** reported in ***AIR 1974 SC 480 (LAWS) (SC)-1973-12-2***, it was held that provisions of Section 5 of the Limitation Act do not govern the filing of the election petition and trial. Since the copy of the petition which is said to have been filed in the Registry on 16.05.2014, is not the one served on the respondents, it is inevitable to hold that the election petition now found in the record in its present form is filed subsequent to 30.06.2014, wherefore hit by Section 81 (1) of the Act and liable to be dismissed under Section 86 of the Act.

27. In his affidavit in Form No.25, the petitioner alleges that “..... main allegation is on respondent No.2 and because of his unfair and partial way of discharging his duties and powers the corrupt practice has happened by Respondent 2 and 3.” Now respondent No.2 is deleted from the cause title. He was required to file fresh affidavit after amending cause title in view of Order VI Rule 15 Sub-Rule 4 of CPC, which has not happened. In the circumstance, it is inevitable to observe that there is no cause of action for the petitioner to litigate this election dispute.

28. The submissions made by Sri V.P.Kulkarni, learned Counsel for respondent No.3 in respect of non-presentation of the petition personally in the open Court is misconceived. The petition is presented in the Registry by the petitioner is in accordance with Rule 7 of Election Petitions Procedure Rules, Karnataka. Rule 22 of the Election Petitions Procedure Rules, Karnataka, reads thus:

“Rule 22: The security for costs shall be paid in cash. Every petition shall be accompanied by a memorandum with a certificate from the Accounts Branch of the High Court that an amount of Rs.2,000/- has been deposited as security.”

Though petitioner has deposited an amount of Rs.2,000/- on 12.06.2014, he has omitted to file a memorandum with a certificate from the Accounts Branch along with his petition. That adds to the infirmities already noticed.

29. The petitioner though does not dispute the defects of his election petition, his grievance is, the 3rd respondent soon after his appearance before the Court since did not question the maintainability of the petition, now at this stage cannot do so by way of applications / I.A.No.4/2014 and I.A.No.5/2014. Though it is a fact that on the very appearance of the 3rd respondent, these applications are not filed, they are filed prior to parties entering into trial. Electoral right being distinct from the fundamental rights guaranteed under the Constitution or any other common law rights, the defective petition does get cured by a short time gap between appearance of the 3rd respondent before the Court and his application for rejection of the petition.

30. The net result of the discussions supra is, the election held during May, 2014 for Belgaum Lok Sabha constituency cannot be challenged in this petition in view of mandate of Section 80 of the Act, since the petition is not in accordance with the provisions of the Act. The petition shall be dismissed for not having filed within 45 days of declaration of electoral result as per the mandate under Section 86 of the Act.

Accordingly, I.A.No. 5/2014 is allowed. The election petition is rejected as not maintainable. Consequently, I.A.No.4/2014 will not survive for consideration. Hence, disposed of. The amount of Rs. 2,000/- deposited by the petitioner in this case is forfeited to the State.

Sd/-

JUDGE

[No. 82/KT-HP/100001/2014/149]

By Order,

DARSUO THANG, Secy.

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